

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT A. THOMPSON,

Defendant-Appellant.

UNPUBLISHED

September 26, 2000

No. 219503

Ingham Circuit Court

LC No. 98-074114-FH

Before: Murphy, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of breaking and entering a building with the intent to steal, MCL 750.10; MSA 28.200. He was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to 7½ to 20 years' imprisonment. Defendant appeals as of right. We affirm.

Defendant raises two issues regarding his sentence. First, defendant claims the trial court abused its discretion and issued a disproportionate sentence. When reviewing a trial court's sentence of an habitual offender, this Court will not find an abuse of discretion for a sentence that is within the statutory limits and the underlying felony, when combined with previous felonies committed, exhibits defendant's inability to conform his conduct to the laws of society. *People v Reynolds*, 240 Mich App 250, 252; 611 NW2d 316 (2000).

The statutory limit for a sentence imposed under the fourth habitual offender statute is life imprisonment if the subsequent felony committed by defendant is punishable upon a first conviction by imprisonment for a maximum term of five years or more. MCL 769.12(1)(a); MSA 28.1084(1)(a). Defendant was found guilty of breaking and entering, MCL 750.10; MSA 28.200. That statute proscribes a maximum sentence of ten years. Thus, the trial court's sentence of 7½ to 20 years was within the statutory limits.

Furthermore, it is apparent from the record and the trial court's inquiry into defendant's previous felony convictions that defendant is unable to conform his conduct to societal norms. Defendant's previous convictions for breaking and entering and possession of burglary tools exhibited a lack of rehabilitation, *People v Cervantes*, 448 Mich 620, 627; 532 NW2d 831 (1995), and a failure

to conform his conduct to the laws of society, *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). Given the similitude between defendant's previous felonies and the instant felony, the apparent failure of defendant to be rehabilitated, and the trial court's consideration of his previous felonies, the trial court's sentence was not disproportionate and was therefore not an abuse of discretion. *Id.*

Defendant next argues the trial court should have applied, or at least considered, the new legislative sentencing guidelines in sentencing defendant. Our Supreme Court has stated that the new sentencing guidelines apply only to felonies committed after January 1, 1999. Administrative Order No. 1998-4. See also *Reynolds, supra* at 253-254. In this case, the felony was committed on October 14, 1998. Therefore, the trial court appropriately declined to apply or consider the new legislative guidelines.

Affirmed.

/s/ William B. Murphy
/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder